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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,622	01/10/2005	Naftali Lobl	P-5894-US1	9647
49443 7590 10/03/2008 Pearl Cohen Zedek Latzer, LLP 1500 Broadway 12th Floor New York, NY 10036			EXAMINER SMITH, CHAIM A	
			ART UNIT 4132	PAPER NUMBER
			MAIL DATE 10/03/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,622

Applicant(s)

LOBL, NAFTALI

Examiner

CHAIM SMITH

Art Unit

4132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:
2. Applicant states that this application is a continuation or divisional application of the prior-filed application. A continuation or divisional application cannot include new matter. Applicant is required to change the relationship (continuation or divisional application) to continuation-in-part because this application contains the following matter not disclosed in the prior-filed application: In USPA 10/463,909, now USPN 7,014,877, applicant previously disclosed a lollipop stick made of flexible material in combination with a compact lollipop container whereas in the instant application applicant now discloses a flexible stick preferably in combination with a compact container or holder which could be used in conjunction with items other than lollipops. There is no disclosure in the previous application of this generic subject matter that encompasses items other than lollipops.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 – 7, 11, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Regarding claim 1, it is unclear whether the term “preferably” indicates that a compact container is or is not required to be present. Nevertheless, if said compact container is not present it is unclear what said stick would be inserted into to cause a separation and bending of at least 180 degrees as claimed. Further, it is unclear whether the term “which may be” regarding the provision of a separation device requires a separation device to be present in the container. Nevertheless if a separation device is not provided, it is unclear how the elongated halves of the stick would be separated on insertion into the container. The use of the stick in claims 2 – 7 depends on the presence of the compact container of claim 1. The language “preferably” in claim 1 renders it unclear whether or not a container is required to be present. If the container is not present it is unknown how the limitations of the claims would be carried out.
6. Further regarding claim 5, it is unclear what it is that has been partially consumed.
7. Regarding claim 11, “a stick substantially as described hereinbefore and with reference to the accompanying drawings”. It is unclear what is to be included or excluded by the claim language. This claim is an omnibus type claim. See MPEP § 2173.05(r).
8. Regarding claim 12, it is unclear from the preferable language of claim 1 whether either a compact container or holder can be provided in step (1). It is unclear what is

the relationship, if any, between the "rigid holder" of step (6) and the "holder" in the phrase "compact container or holder." Should "rigid holder" read "rigid stick."

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kinski, US 4,274,429.

11. Claim 1 is directed to a flexible stick that is dividable at one end into two elongated halves with an item firmly attached at the opposite end wherein the language of the claim does not specifically require a container with a separation device to be present.

12. A stick, wherein the major portion divides into two elongated halves when separated, could reasonably be thought of as being two adjacent sticks that may be moved from a generally parallel position to a divided position wherein they are then arranged in a V-shaped configuration. Kinski discloses two parallel sticks dividable at one end into two elongated portions wherein an item is retained and firmly attached to the other end (column 2, lines 23 – 33).

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1 – 10 and 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 11 of U.S. Patent No. 7,014,877. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 – 10 and 12 are generic to all that is recited in claims 1 – 11 of the '877 patent respectively. The claims of the conflicting patent fully anticipate the scope of claims 1 – 10 and 12 and thus render obvious the claims in the instant application.

15. The claims of the conflicting patent differ from the claims in the instant application by the fact that the terms and phrases "item", "stick" and "compact container" in this application are generic descriptors of specific items in the '877 patent, namely, a "candy" or "lollipop", a "lollipop stick", and a "compact lollipop container", respectively. The correspondence between the respective claims is as follows: the product of claim 1 reciting "a stick made of a flexible material" encompasses claim 1 of the '877 patent

reciting "a lollipop stick made of a flexible material"; the "item" in claims 1 and 10 encompasses claims 1 and 10 of the '877 patent reciting "candy"; the "compact container" of claims 1 and 4 encompasses claims 1 and 4 of the '877 patent reciting "compact lollipop container"; "the stick" of claims 2 – 8 encompasses claims 2 – 8 of the '877 patent reciting "lollipop stick"; the language of claim 9 is quoted verbatim from the '877 patent; the "item" of claim 12 in the preamble and step 4 encompasses claim 11 of the '877 patent reciting "lollipop"; the "item" of claim 12 in steps 2, 3, and 6 encompasses claim 11 of the '877 patent reciting "candy"; the "retention end" of claim 12 step 2 encompasses claim 11 of the '877 patent reciting "candy retention end". Here the claims of the conflicting application constitute a sub-genus of the claims of the instant application. The sub-genus fully anticipates the genus, and so the claims of the instant application are obvious with regards to the claims of the conflicting application.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.
17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Lavilla can be reached on 571-272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. S./
Examiner, Art Unit 4132

**/Michael La Villa/
Michael La Villa
Supervisory Patent Examiner, Art Unit 4132
30 September 2008**